

R E M A R K S

Claims 1-3, 9-11, 16-23, and 28-31 are under consideration. Claims 4-8, 12-15, 24-27, and 32-76 were withdrawn from consideration by the Examiner due to finality of the Restriction Requirement presented in an earlier Office Action dated March 15, 2005.

The novelty of Claims 1-3, 9-11, 16-23, and 28-31 is noted with sincere appreciation.

Claims 1-3, 9-11, 16-23, and 28-31 are rejected solely under section 103(a) as allegedly obvious over Falardeau et al. (EP 0201411) or Kolich et al. (U.S. Pub. No. 2002/0061983), in view of Neuberg et al. (U.S. 4,151,223). This rejection is respectfully traversed. For the following reasons, the Examiner should reconsider and withdraw this rejection.

Neuberg et al. is directed to the use of brominated polystyrenes in fibers and filaments of thermoplastic polyesters. Neuberg et al. lists a variety of ways of producing brominated polystyrenes, including bromination of hydrogenated oligomeric styrenes, brominating naturally occurring oligostyrenes, polymerizing bromostyrenes, and use of a single vessel process to obtain brominated oligostyrenes from styrene and bromine. *Brominated anionically polymerized* polystyrene is not mentioned or even suggested anywhere in Neuberg et al.

Falardeau et al. and Kolich et al. both teach brominated anionic polystyrene, but both Falardeau et al. and Kolich et al. are *silent* regarding fibers or filaments.

In contrast, the present claims are directed generally to a *fiber or filament* formed from at least a polybrominated *anionic* styrenic polymer *and a fiber-forming* thermoplastic polymer.

According to Page 3 of the Office Action, the motivation to combine the cited references is provided by the observation that polyester compositions with flame-retardants are well known for use in textiles. It is further alleged that this observation also provides a reasonable expectation of success to one of ordinary skill in the art. Yet, these allegations completely miss the point, which is that nothing cited in the Office Action motivates a person of ordinary skill in the art to combine a polybrominated *anionic* styrenic polymer with anything pertaining to fiber or filament-forming material. The Examiner has pointed to no such motivation, because no such motivation exists in the cited references, when the claims are properly viewed each as a whole and without the benefit of the Applicants' disclosure.

Furthermore, in Neuberg et al., the degree of polymerization is from 3 to 100 (column 1, lines 58-59). In contrast, in Falardeau et al., a degree of polymerization of greater than about 400 is required (Page 3, lines 25-30). Thus, Falardeau et al. and Neuberg et al. are directed to distinctly different polymers, teaching away from some combination of their respective teachings.

In the absence of any real motivation to combine the cited references, it appears that the Examiner is using the Applicant's own disclosure to construct a rejection out of isolated parts of disclosures from the cited references without regard for that which the cited references teach when read in their entirety, and without regard to the claims when read each as a whole. It has long been established that it is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. . . . This is improper hindsight analysis. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448, 230 U.S.P.Q. 416 (Fed. Cir. 1986).

For the foregoing reasons, the present rejection constitutes the improper use of hindsight based on the Applicants' disclosure to combine Falardeau et al. or Kolich et al. with Neuberg et al., fails to establish a *prima facie* case of obviousness, and should be reconsidered and withdrawn.

This case is believed to be in condition for allowance. Prompt notification to this effect would be sincerely appreciated. If any matters remain that require further consideration, the Examiner is requested to telephone the undersigned at the number given below so that such matters may be discussed, and if possible, promptly resolved.

Please continue to address all correspondence in this Application to Mr. Edgar E. Spielman, Jr. at the address of record.

Respectfully submitted,

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